

APPENDIX C

California Regional Water Quality Control Board Santa Ana Region

RESOLUTION NO. R8-2003-039

**Resolution Amending the Water Quality Control Plan for the Santa Ana River Basin to
Incorporate a Diazinon and Chlorpyrifos Total Maximum Daily Load for San Diego
Creek and Upper Newport Bay**

**WHEREAS, the California Regional Water Quality Control Board, Santa Ana
Region (hereinafter, Regional Board), finds that:**

1. An updated Water Quality Control Plan for the Santa Ana River Basin (Basin Plan) was adopted by the Regional Board on March 11, 1994, approved by the State Water Resources Control Board (SWRCB) on July 21, 1994, and approved by the Office of Administrative Law (OAL) on January 24, 1995.
2. The Basin Plan specifies the narrative water quality objective for San Diego Creek and Upper Newport Bay that toxic substances shall not cause adverse impacts to beneficial uses.
3. The narrative objective for toxic substances is not being achieved in San Diego Creek and Upper Newport Bay due to persistent aquatic toxicity, as demonstrated by monitoring data collected from these waterbodies. Beneficial uses adversely impacted by aquatic life toxicity include WILD and WARM in San Diego Creek and BIOL, COMM, EST, MAR, RARE, and SPWN in Upper Newport Bay.
4. Investigations conducted in San Diego Creek demonstrate that persistent aquatic toxicity is caused largely by diazinon and chlorpyrifos. Investigations conducted in Upper Newport Bay demonstrate that persistent aquatic toxicity is caused largely by chlorpyrifos.
5. In response to the findings of aquatic toxicity, the Regional Board listed San Diego Creek and Newport Bay as water quality limited in accordance with Section 303(d) of the Clean Water Act. Section 303(d) requires the establishment of a Total Maximum Daily Load (TMDL) for the pollutant(s) causing the toxicity (diazinon and chlorpyrifos). Section 303(d) also requires the allocation of the TMDL among sources of diazinon and chlorpyrifos. State law requires an implementation plan and schedule to ensure that the TMDL is met and compliance with water quality standards is achieved.
6. On June 14, 2002, the U.S. Environmental Protection Agency (U.S. EPA) established a TMDL for diazinon and chlorpyrifos in San Diego Creek and, for chlorpyrifos in Upper Newport Bay. The U.S. EPA TMDL did not include an implementation plan.

7. The Basin Plan amendment shown in the attachment to this Resolution was developed in accordance with Water Code Section 13240 *et seq.* The amendment is proposed for incorporation into Chapter 5 “Implementation”, of the Basin Plan. The amendment specifies a TMDL that includes an implementation plan but is otherwise identical to the TMDL established by the U.S. EPA with respect to the numeric targets and load allocations. The proposed Basin Plan amendment also provides background information concerning the water quality impairment being addressed, and the sources of diazinon and chlorpyrifos in the Newport Bay watershed. The proposed TMDL is supported by a detailed report prepared by Regional Board staff and titled “Diazinon and Chlorpyrifos TMDL, Upper Newport Bay and San Diego Creek, February 21, 2002 (hereinafter, “TMDL Report”).
8. The process of basin planning has been certified by the Secretary of Resources as functionally equivalent to the preparation of an Environmental Impact Report or Negative Declaration, as required by the California Environmental Quality Act (Public Resources Code Section §21000 *et seq.*). The Basin Plan amendment package includes an Environmental Checklist and staff reports that include an assessment of the potential environmental impacts of the Basin Plan amendment and a discussion of alternatives. The amended Basin Plan, Environmental Checklist, staff reports, and supporting documentation are functionally equivalent to an Environmental Impact Report or Negative Declaration.
9. The proposed amendment will result in no potential for adverse effect, either individually or cumulatively, on wildlife.
10. The Regional Board has considered federal and state anti-degradation policies and other relevant water quality control policies and finds the amendment consistent with those policies.
11. The TMDL Report was scientifically peer reviewed in January and February, 2003. In response to the comments received, additional data concerning degradation pathways for diazinon and chlorpyrifos were added to the TMDL Report. No changes to the proposed Basin Plan amendment shown in the Attachment to this Resolution were required.
12. In February 2003, a Notice of Filing, the TMDL Report, environmental checklist, and the draft amendment were prepared and distributed to interested individuals and public agencies for review and comment in accordance with state and federal regulations (23 CCR §3775, 40 CFR 25 and 40 CFR 131).
13. On February 21, 2003, the Regional Board held a Public Workshop to consider the Basin Plan amendment. This meeting served as Public Scoping meeting as required

by the California Environmental Quality Act. Notice of the workshop was given to all interested persons.

14. Notice of the public hearing to consider adoption of the proposed Basin Plan amendment was published in accordance with Water Code Section §13244.
15. This amendment will affect all dischargers in the Newport Bay Watershed by requiring them to institute monitoring programs for diazinon and chlorpyrifos, and imposing limits on discharges of these compounds.

The Regional Board has considered the costs of implementing the amendment, and finds these costs to be reasonable. The costs associated with the reductions in diazinon and chlorpyrifos required by the TMDL will result largely from the re-registration agreements for these compounds, and not the TMDL.

16. The Basin Plan amendment must be submitted for review and approval by the SWRCB, OAL, and the U.S. Environmental Protection Agency (U.S. EPA). Once approved by the SWRCB, the amendment is submitted to OAL. A Notice of Decision will be filed after the SWRCB and OAL have acted on this matter. The SWRCB will forward the approved amendment to EPA for review and approval.
17. For the purposes of specifying compliance schedules in NPDES permits for effluent limitations necessary to implement this TMDL, the schedule(s) specified in this TMDL shall govern, notwithstanding other compliance schedule authorization language in the Basin Plan.
18. The adoption of this TMDL is necessary to reduce loadings of diazinon and chlorpyrifos, and to address water quality impairments that arise therefrom.

NOW, THEREFORE BE IT RESOLVED THAT:

1. The Regional Board adopts the amendment to the Water Quality Control Plan for the Santa Ana River Basin (Region 8) as set forth in the attachment.
2. The Executive Officer is directed to forward copies of the Basin Plan amendment to the SWRCB in accordance with the requirements of Section §13245 of the California Water Code.
3. The Regional Board requests that the SWRCB approve the Basin Plan amendment in accordance with Sections §13245 and §13246 of the California Water Code and forward it to the OAL and U.S. EPA for approval.
4. If during its approval process, the SWRCB or OAL determines that minor, non-substantive corrections to the language of the amendment are needed for clarity or

consistency, the Executive Officer may make such changes, and shall inform the Board of any such changes.

5. The Executive Officer is authorized to sign a Certificate of Fee Exemption in lieu of payment of the California Department of Fish and Game filing fee.

I, Gerard J. Thibeault, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a resolution adopted by the California Regional Water Quality Control Board, Santa Ana Region, on April 4, 2003.

Gerard J. Thibeault
Executive Officer

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